IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 27.02.2007

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice N.PAUL VASANTHAKUMAR

W.A. No.1554 of 2006 and W.P. Nos.5651 to 5657, 5729 to 5735, 5786 to 5788, 5945 to 5949, 9569, 10079, 12945 to 12947, 13438, 14469 & 26204 of 2006

and

MP No.1/2006 and WPMP Nos.6105, 6107, 6109, 6111, 6113, 6115, 6117, 6208, 6210, 6212, 6214, 6216, 6218, 6220, 6269, 6271, 6273, 6434, 6436, 6438, 6440, 6442, 10621, 11392, 14540 to 14542, 15009 & 15252 of 2006

Writ Appeal No.1554 of 2006

D. Valli ... Appellant/ Petitioner

vs.

1. The Additional Chief Engineer
(Purchase and Administration)
North Chennai Thermal Power Station,
Chennai - 600 120.

2. The Superintending Engineer
(Purchase and Administration)
North Chennai Thermal Power Station,
Chennai-600 120. ... Respondents/ Respondents

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W.A.No.1554 of 2006:- Appeal filed under Clause 15 of the Letter patent against the order of the Learned Single Judge, dated 21.9.2006 made in W.P.No.34793 of 2006 writ of certiorari calling for the entire records made in the impugned order of recovery of subsistence allowance in Ku.A.No.Ni.Pi.5/Ni.2/ Pa.No.002/05 Dated 5.1.2006 passed by the ISt respondent and quash the same.

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1.E.Chinnaraj ... Petitioner in W.P.5651 of 2006
2.S. Nainar ... Petitioner in W.P.5652 of 2006
3.P. Srinivasan ... Petitioner in W.P.5653 of 2006
4.M.P. Kannan ... Petitioner in W.P.5654 of 2006
5.P. Dharmaraj ... Petitioner in W.P.5655 of 2006
6.S. Ayalsamy ... Petitioner in W.P.5656 of 2006
7.E. Vaiyamanickam ... Petitioner in W.P.5657 of 2006
8.P. Ramachandran ... Petitioner in W.P.5729 of 2006
9.S. Jothi ... Petitioner in W.P.5730 of 2006
10.V. Ganesan ... Petitioner in W.P.5731 of 2006
11.A. Sathishkumar ... Petitioner in W.P.5732 of 2006
12.S. Malaipandi ... Petitioner in W.P.5733 of 2006
13.M. Mohan ... Petitioner in W.P.5734 of 2006
14.P. Mookandi ... Petitioner in W.P.5735 of 2006
15.C. Naveendran ... Petitioner in W.P.5786 of 2006
16.G. Balan ... Petitioner in W.P.5787 of 2006
17.K. Gopal ... Petitioner in W.P.5788 of 2006
18.A. Gnanamoorthy ... Petitioner in W.P.5945 of 2006
19.J. Suresh ... Petitioner in W.P.5946 of 2006
20.L. Joseph Suresh Raj ... Petitioner in W.P.5947 of 2006
21.K. Mari ... Petitioner in W.P.5948 of 2006
22.P. Murugesan ... Petitioner in W.P.5949 of 2006
23.A. Ismail ... Petitioner in W.P.9569 of 2006
24.D. Joseph ... Petitioner in W.P.10079 of 2006
25.P. Shanthi ... Petitioner in W.P.12945 of 2006
26.L. Ambika ... Petitioner in W.P.12946 of 2006
27.S. Venkatesan ... Petitioner in W.P.12947 of 2006
28.E. Ravikumar ... Petitioner in W.P.13438 of 2006
29.V. Chandrasekaran ... Petitioner in W.P.14469 of 2006
30.S. Beermohamed ... Petitioner in W.P.26204 of 2006

vs.

1. Tamil Nadu Electricity Board,
rep by the Chief Engineer (Personnel)
No.800, Anna Salai,
Chennai-2.

2. The Additional Chief Engineer,
(Purchase & Administration),
North Chennai Thermal Power Station,
Chennai-120. ... Respondents/
Respondents in all the
Writ Petitions

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Petition under Article 226 of the Constitution of India for the issuance of a writ of certiorarified mandamus to call for the entire records connected with the impugned board proceedings in B.P. (F.B.) No.27 (Administrative Branch) dated 07.11.2002 issued by the 1st respondent and quash para 5(d) of the same and the consequential order of recovery passed by the 2nd respondent in Ku.A.No.Ni.P.5/Ni.2/Pa.No.010.06 dated 06.01.2006 (W.P.No.5651 to 5657 of 2006, W.P.No.5729 to 5731/06, W.P.5733 to 5735 of 2006 and W.P.NO.26204 of 2006)
Ku.A.No.Ni.P.5/Ni.2/Pa.No.007/06 dated 06.01.2006 (W.P.No.5732 of 2006), Ku.A.No.Ni.P.5/Ni.U.2/Pa.No.015/06 dated 10.01.2006 (W.P.No.5786 of 2006, 13438 of 2006), Ku.A.No.Ni.P.5/ Ni.2 / Pa.No. 239/06 dated 2.2.2006, (W.P.No.5787 of 2006, 5788/06, 10079/06, 12946/06) Ku.A.No.Ni.P.5/Ni.2/Pa.No.002/05 dated 05.01.2006 (W.P.No.5945/06 to 5949/06, 12945/06, 12947/06) Ku.No.Ni.Pi.5/Ni.2/Pa.No.44/2006 dated 06.03.2006, (W.P.No.9569 of 2006), Ku.A.No.Ni.Pi.5/Ni.U.2/Pa.No.55/2006 dated 24.03.2006, (W.P.No.14469 of 2006), insofar as the petitioner is concerned and direct the respondents to pay the balance of wages to the petitioner for the period under suspension.

Mr.M.Radhakrishnan, for Mr.SN.Ravichandran for appellant, and for petitioners in all Writ Petitions.

Mr.M.Vaidhyanathan, for respondents in WA No.1554 of 2006 & WP Nos.9569, 10079, 12945 to 12947, 13438, 14469, 26204 of 2006 and for R2 in W.Ps.5651 to 5657, 5729 to 5735, 5786 to 5788, 5945 to 5949 of 2006.

Ms.V.Yamuna Devi, for R-1 in WP Nos.5651 to 5657, 5729 to 5735, 5786 to 5788, 5945 to 5949 of 2006.

COMMON JUDGMENT

(Judgment of the Court, delivered by P.Sathasivam, J.)

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The issue raised in the Writ Appeal and the Writ Petitions is one and the same, hence, they are being disposed of by the following Common Judgment.

2. Writ Appeal No.1554 of 2006 is directed against the Order of the learned single Judge, dated 21.09.2006, made in W.P. No.34793 of 2006, in and by which, the learned Judge, after going through the common order of the earlier Division Bench, dated 18.12.2002, passed in W.A. Nos.2454 and 2589 of 2002 etc. Batch and

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after finding that there is no merit in the claim of the writ petitioner, dismissed her writ petition with costs of Rs.1,000/-.

3. In the Writ Petitions, the petitioners seek to quash para 5(d) of the Board Proceedings, dated 07.11.2002, in B.P.(F.B.) No.27 (Administrative Branch) as well as the consequential orders for recovery of subsistence allowance and some of them also pray for a direction to the respondents to pay the balance of wages for the period under suspension.

4. According to the Writ Petitioners, they initially joined as Contract Labourers in North Thermal Power Station. Based on the request of several Unions for regular absorption of the workers, who were continuously working in the Board as contract labourers, the North Thermal Power Station and other Power Stations decided to absorb those candidates who have completed 480 days of continuous service in two consecutive years. On account of this, the Electricity Board issued B.P.(FB) No.17 dated 28.04.1999 to absorb the contract Labourers, who were working in all the four Thermal Stations. The petitioners were identified and, on 27.10.1999, orders were issued for their regular absorption. In the year 2000, the Administration suspended the petitioners on the ground that they submitted bogus certificates at the time of their absorption and, after framing charges, directed them to furnish explanation for the same. The petitioners submitted their explanation and the 2nd respondent, not satisfied with the same, after conducting enquiry, issued show cause notice proposing to impose a punishment of dismissal. Aggrieved by the same, the petitioners filed writ petitions and this Court advised the Board to settle the issue by imposing punishment other than dismissal. Pursuant to the same, the Board issued B.P. No.27 (Administrative Branch), dated 07.11.2002, modifying the order of dismissal as one of stoppage of three increments and reinstating the workers in the starting time scale. Based on the same, the 2nd respondent obtained letters from the petitioners, who consented thereby for recovery of subsistence allowance, and reinstated all of them in service. While so, in 2006, the 2nd respondent issued orders to recover the subsistence allowance paid to them in monthly instalments based on the circular in B.P. No.27 dated 07.11.2002. Contending that both the proceedings are unconstitutional and ultra vires the Standing Orders, the petitioners have filed the above Writ Petitions.

5. Heard Mr.M.Radhakrishnan, learned counsel appearing for the appellant in W.A. No.1554 of 2006 and petitioners in all the Writ Petitions and M/s.M.Vaidyanathan and V.Yamuna Devi for respondents/Electricity Board.

6. The only point for consideration in the Writ Appeal and the Writ Petitions is as to whether the Board is justified in

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recovering the subsistence allowance paid during the course of disciplinary proceedings.

7. It is not in dispute that the petitioners were absorbed based on the certificates produced by them. The Enquiry conducted by the Board revealed that they submitted bogus certificates and hence they were proceeded against by the Administration. Ultimately, when the Board decided to impose the punishment of dismissal from service, the Division Bench intervened and suggested for a lesser punishment taking into account the factor of proportionality of punishment and in view of the fact that Justice Khalid Commission had recommended relaxation in educational qualification as also age. Pursuant to the suggestion of the Division Bench, the Electricity Board favourably responded and had issued Board Proceedings vide BP (FB) No.27 (Administrative Branch), dated 07.11.2002, in and by which, the cases had been categorised into four for lifting the suspension and also for regularisation. The petitioners are concerned/aggrieved of paragraph No.5(d) of the Board's proceedings, which reads as under:-

> " (d) Where the employee is under suspension and Disciplinary Proceedings is pending, the employee will be reinstated without prejudice to the Disciplinary Proceedings pending against him. The period of absence will be regularised by sanction of E.L. at credit and the balance as E.O.L. without pay and allowances. The subsistence allowance already paid will be adjusted for E.L. at credit and balance amount will be recovered in easy instalments. "

It is also relevant to mention that the Division Bench, in their order dated 18.12.2002 in W.A. Nos.2454 and 2589 of 2002 etc. Batch, after incorporating all the conditions in the Board Proceedings, dated 07.11.2002, passed the following order:-

> " These two writ appeals and the writ petitions are disposed of in terms of the above Board Proceedings and now, the respective appellants and the writ petitioners shall make a representation before the concerned Superintending Engineers for further follow up action, and the cases of the respective writ appellants and the writ petitioners shall be decided in accordance with the conditions enumerated in the above Board proceedings, which are extracted above. We also make it clear that the concerned Superintending Engineers, on being approached by the respective appellants and the writ petitioners, shall afford sufficient

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opportunity for compliance of the conditions. The arrears of salary, if any, payable, will depend upon the orders to be passed in accordance with the above Board proceedings. Consequently, the connected miscellaneous petitions are closed."

8. As rightly pointed out by Mr.M.Vaidhyanathan, learned counsel for the Electricity Board, inasmuch as all the terms and conditions in the Board Proceedings have been approved by the Division Bench and the petitioners have also agreed to abide by the conditions, now, those conditions imposed in the said B.P. particularly para 5(d) cannot be faulted with, and, in any event, the same cannot be questioned in a separate proceeding. In other words, according to him, if the petitioners are aggrieved of clause 5 (d), the proper course open for them would be to file a Review Petition against the Division Bench Order dated 18.12.2002. We are conscious of the fact that the amount sought to be recovered relates to subsistence allowance that was paid to the petitioners during the course of disciplinary proceedings and that the entire amount might have been spent for their survival. We are also aware of the fact that if any amount is paid under Section 17(b) of the Industrial Disputes Act during the pendency of the proceedings, irrespective of the result, the workman need not repay the amount already received by him. At the same time, it is our duty to mention that no such objection was raised before the Division Bench and even if they say that none appeared for them when the matter was heard/decided by the Division Bench, at least, after getting copy of the Order, they could have moved the Bench for appropriate clarification/orders. As rightly pointed out by the learned single Judge, having benefited of the Board Proceedings which came to be passed on the suggestion of the Division Bench and agreed to repay the amount, the petitioners cannot question either the Board Proceedings or the recovery by filing writ petition. The only course open to the petitioners is to file review petition seeking clarification/modification of the order dated 18.12.2002 made in W.A. Nos.2454 and 2589 of 2002 etc. Batch. We accept the contention of the learned counsel for the Electricity Board.

9. As discussed earlier, the appellant as well as the writ petitioners are free to file Review Petition, if they so desire, seeking review of the order dated 18.12.2002 made in W.A. Nos.2454 and 2589 of 2002 etc. Batch with reference to the conditions imposed in para No.5(d) of the Board Proceedings dated 07.11.2002. It is made clear that the time taken by them in prosecuting the appeal/writ petitions before this Court shall be excluded for the purpose of limitation. Taking note of the fact that the appellant in W.A. No.1554 of 2006 is a lower grade employee, we are of the view that the direction for payment of costs would be a burden for

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her. Accordingly, we set aside the order for payment of costs in W.P. No.34793 of 2006. Except the above modification, Writ Appeal and Writ Petitions are dismissed with liberty to the appellant/writ petitioners to file Review Petition if they so desire while making it clear that we have not expressed anything on the merits or otherwise of the claims of the parties so as to canvass the same in the Review Petition/s to be filed. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

JI.

To

1. The Chief Engineer (Personnel)
Tamilnadu Electricity Board,
800 Anna Salai, Chennai- 600 002.

2. The Additional chief Engineer
(Purchase and Administration)
North Chennai Thermal Power Station,
Chennai - 600 120.

3. The Superintending Engineer (Purchase and Administration)
North Chennai Thermal Power Station, Chennai-600 120.

1 cc to Mr.S.N. Ravichandran, Advocate, Sr. 11949
1 cc to Mr.M. Vaidayanathan, Advocate, Sr. 11723

W.A. No.1554 of 2006 and W.P. Nos.5651 to 5657, 5729 to 5735, 5786 to 5788, 5945 to 5949, 9569, 10079, 12945 to 12947, 13438, 14469, 26204 of 2006.

MS (CO)
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